

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

EQUIVEST FINANCIAL, LLC,)
CENTRAL ALABAMA,)
)
Plaintiff,)
)) CIVIL ACTION NO.
v.) 2:18cv606-MHT
) (WO)
JOHN JOSEPH BONICELLI,)
et al.,)
)
Defendants.)

OPINION AND ORDER

Plaintiff Equivest Financial, LLC, Central Alabama filed this case for ejectment and for a bill to quiet title in state court on June 9, 2018. The complaint names five defendants: John Joseph Bonicelli, or his assigns or heirs if deceased; Sonya H. Bonicelli, or her assigns or heirs if deceased; USAmeriBank, as successor by merger to Aliant Bank; The United States; the State of Alabama Department of Revenue; and a parcel of land. The United States removed this case to this court on June 25, 2018.

Federal Rule of Civil Procedure 4(m) provides:

"If a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period."

Fed. R. Civ. P. 4(m). The time period under Rule 4(m) starts on the date of removal to federal court, not the date the case was filed in state court. See, e.g., *Cardenas v. City of Chicago*, 646 F.3d 1001, 1004 (7th Cir. 2011); *Wallace v. Microsoft Corp.*, 596 F.3d 703 (10th Cir. 2010); see also 4B Fed. Prac. & Proc. Civ. § 1137 (4th ed.). Thus, Equivest Financial had until September 30, 2018, to serve the defendants.

Equivest Financial timely sought and received an extension of time to serve the Bonicelli defendants until November 10, 2018. See Motion for Extension (doc. no. 7); Order (doc. no. 8). That date has come and gone, with no proof of service filed as to those

defendants. It also appears that Equivest Financial has not served defendant USAmeriBank.

Accordingly, it is ORDERED that plaintiff Equivest Financial, LLC, Central Alabama show cause, if any there be, in writing by April 1, 2019, as to why its claims against defendants John Joseph Bonicelli, or his assigns or heirs if deceased; Sonya H. Bonicelli, or her assigns or heirs if deceased; and USAmeriBank, as successor by merger to Aliant Bank, should not be dismissed without prejudice pursuant to Federal Rule of Civil Procedure 4(m) .

DONE, this the 11th day of March, 2019.

/s/ Myron H. Thompson
UNITED STATES DISTRICT JUDGE